

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA**

**JASON DAN TAYLOR,**

**Petitioner,**

**v.**

**MIKE KNOWLES, Warden,**

**Respondent.**

**1: 01 -CV- 6376 AWI LJO HC**

**ORDER DENYING MOTION FOR A  
CERTIFICATE OF APPEALABILITY**

[Document #23]

Petitioner is a state prisoner proceeding pro se who filed a petition for writ of habeas corpus on pursuant to 28 U.S.C. § 2254. On October 6, 2003, the court adopted the Magistrate Judge's Findings and Recommendations and denied the petition for writ of habeas corpus. On June 16, 2008, Petitioner filed a motion for relief from judgment, which the court denied.

On May 29, 2009, Petitioner filed a motion for a certificate of appealability.

A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his petition, and an appeal is only allowed in certain circumstances. Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003). Before Petitioner can appeal this's court's decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R.App. P. 22(b). The controlling statute for issuing a certificate of appealability is 28 U.S.C. § 2253, which provides as follows:

- (a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.
- (b) There shall be no right of appeal from a final order in a proceeding to test the validity

1 of a warrant to remove to another district or place for commitment or trial a person  
2 charged with a criminal offense against the United States, or to test the validity of such  
person's detention pending removal proceedings.

3 (c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may  
not be taken to the court of appeals from—

4 (A) the final order in a habeas corpus proceeding in which the detention complained of  
arises out of process issued by a State court; or

5 (B) the final order in a proceeding under section 2255.

6 (2) A certificate of appealability may issue under paragraph (1) only if the applicant has  
made a substantial showing of the denial of a constitutional right.

7 (3) The certificate of appealability under paragraph (1) shall indicate which specific issue  
or issues satisfy the showing required by paragraph (2).

8 The time limit for filing a notice of appeal following entry of an order denying a petition  
9 for writ of habeas corpus is thirty days. See Fed. R.App. P. 4(a). Petitioner's notice of appeal and  
10 motion for a certificate of appealability were filed some four and a half years after the petition  
11 was denied. As such, Petitioner has failed to timely appeal. The failure to file a timely notice of  
12 appeal deprives the Court of Appeals of jurisdiction. Bowles v. Russell, 127 S.Ct. 2360, 2366  
13 (2007). The United States Court of Appeals for the Ninth Circuit has held that the issuance of a  
14 certificate of probable cause cannot vest the court of appeals with jurisdiction if jurisdiction is  
15 not proper in that court. Hayward v. Britt, 572 F.2d 1324, 1325 (9th Cir.1978). Reading  
16 Bowles and Hayward together, the court finds that the issuance of a certificate of appealability at  
17 this time would not give the Ninth Circuit jurisdiction over Petitioner's appeal, and as such, the  
18 court has no choice but to deny the certificate of appealability. See Crespo v. Martel, 2009 WL  
19 2208093, \*1 (E.D.Cal. 2009).

20 Regardless, the court declines to issue a certificate of appealability. If the court denies  
21 a Petitioner's petition, the court may only issue a certificate of appealability "if jurists of reason  
22 could disagree with the district court's resolution of his constitutional claims or that jurists could  
23 conclude the issues presented are adequate to deserve encouragement to proceed further."  
24 Miller-El, 537 U.S. at 327; Slack v. McDaniel, 529 U.S. 473, 484 (2000). While Petitioner, is  
25 not required to prove the merits of his case, he must demonstrate "something more than the  
26 absence of frivolity or the existence of mere good faith on his . . . part." Miller-El, 537 U.S. at  
27  
28

337-38. Petitioner's motion for a certificate does not provide any specific arguments concerning  
Petitioner's claim. The court finds that reasonable jurists would not disagree with the court's  
conclusion.

Accordingly, the court ORDERS that:

1. Petitioner's motion for a certificate of appealability is DENIED; and
2. No certificate of appealability SHALL BE ISSUED.

IT IS SO ORDERED.

**Dated: August 18, 2009**

**/s/ Anthony W. Ishii**  
CHIEF UNITED STATES DISTRICT JUDGE